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No. 06-1562

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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

JEFFREY R. GOLIN, ELSIE Y. GOLIN, NANCY K. GOLIN
Plaintiff-Petitioners

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SACRAMENTO, HON. ROLAND L. CANDEE, PJ, AND HON. LOREN E. MCMASTER, PRESIDING,
Respondents

CLIFFORD B. ALLENBY, THERESA DELGADILLO, H. DEAN STILES, S. KIMBERLY BELSHÉ, ARNOLD SCHWARZENEGGER, COUNTY OF SANTA CLARA, AND SANTA CLARA COUNTY BOARD OF SUPERVISORS, JAMIE BUCKMASTER, MARY GREENWOOD, MALORIE M. STREET, JAQUI DUONG, RANDY HEY, SAN ANDREAS REGIONAL CENTER, INC., SANTI J. ROGERS, MIMI KINDERLEHRER, TUCKER LISKE, LISA WENDT, R.N., NANCY J. JOHNSON, CITY OF PALO ALTO, LORI KRATZER, EDNA MANTILLA, DBA EMBEE MANOR, ROSELILY TALLA, ANSELMO TALLA, DBA TALLA HOUSE, STANFORD HOSPITAL, INC., GEORGIANNA LAMB, MARVIN P. MASADA, M.D., AND DOES 1-50,
Real Parties in Interest

On Petition for a Writ of Certiorari
To the California Supreme Court

SUPPLEMENTAL BRIEF OF PETITIONERS

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SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Pursuant to Supreme Court Rule 15.8[1], Petitioners Nancy Golin, by and through her parents, Jeffrey and Elsie Golin; Jeffrey Golin; and Elsie Golin submit this supplemental brief in support of their March 21, 2007, petition for a writ of certiorari to review the interlocutory order of the California Supreme Court.

Since we filed the April 26, 2006 complaint in this already important civil rights and tort case, including ADA and constitutional torts, the stakes have become significantly higher for the Golins and for other parents of minors or disabled children who plan to litigate – or are litigating cases requiring the appointment of a *guardian ad litem* (GAL) for their plaintiff children as "aggrieved parties" against public entities.

As we show in greater detail below, since the underlying prior opinion, *Williams v. Sup. Ct.* 147 Cal.App.4th 36, (Jan. 26, 2007) cited in our petition, other courts have relied upon *Williams* to extend its reasoning beyond its distinguishable bounds, alleging frivolous purported conflicts of interest in parents that consequently place *defendants* in a position to deprive children of any legal remedy. The result is that children are deprived who may have *meritorious* civil litigation seeking civil rights relief against official misconduct. In these new cases, public officials achieve the desired deprivatin by pretextually challenging parental appointments as *plaintiffs'* guardians ad litem (GAL) representatives of their own children and then imposing or attempting to impose the defendants' own choices as GAL's.

In the concurrent case cited in our petition, *Kulya v. San Francisco*, 2007 WL 760776 (N.D.Cal.) (March 9, 2007), Georgy Kulya attempted to sue the San Francisco Police Department on behalf of his minor son Yvan for the Department's removal of the child from his father's custody overnight and placing him in a shelter, on unproven and unsupported allegations of parental abuse against Georgy by Georgy's disgruntled estranged wife. The federal court, Northen District of California, Hon. Jeffrey

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[1] Rule 15.8 expressly allows "[a]ny party [to] file a supplemental brief at any time while a petition for certiorari is pending, calling attention to other intervening matter not available at the time of the party's last filing."

White presiding, found at the urging of the police that Georgy had "at minimum a potential confict of interest" with his son on these grounds, and the court requested that both sides, plaintiffs and defendants, provide a list nominating three independent GAL's, thus giving the police a possible say in the choice of plaintiffs' representative. Both sides were ordered to split the costs. In the latest development, on May 18, 2007, too late to notice for inclusion in our original petition, that disturbing outcome was realized: the court selected one of the *defendant* police departments' nominee as the *plaintiffs'* GAL. *Kulya* has not yet appealed the establishment of what is likely to become a very dangerous precedent, as already argued in the Golin's original petition.

A newer case has challenged the issue, *Bhatia v. Corrigan,* Slip Copy, 2007 WL 1455908, N.D.Cal., (May 16, 2007). This case was also noticed too late to be included in our petition. Here, Lal Bhatia was disqualified as his daughter's guardian ad litem in a lawsuit against a federal agent who he alleged had maliciously and overzealously prosecuted him, and accosted and frightened his daughter without probable cause at a schoolyard during an investigation. Just as in *Kulya*, the District Court for the Northern District of California, Hon. Claudia Wilken, ordered both defendants and plaintiffs to compose a list of three successor guardians ad litem, again following the same procedure as did the *Kulya* court.

Since the filing of our petition, however, Bhatia challenged this interlocutory order with a Petition for Writ of Mandate with the Ninth Circuit, (*Bhatia, et al v. USDC-OAK*, Case No. CV-07-02054-CW (filed May 30, 2007)), contending as did *Kulya*, that there is simply no role for a defendant to play a part in selecting the GAL for a minor [or incompetent] plaintiff in a civil lawsuit. This petition is currently pending.

We urge the Court to grant certiorari to settle this and similar matters, to stem the growing appeal of this defense tactic that threatens to turn the tables on parents seeking litigation on behalf of their children, chilling legal recourse redressing official misconduct on behalf of children or incompetent family members in meritorious civil rights cases.

The severity of the *Kulya* and *Bhatia* facts pales into insignificance compared to the distressing events in the Golins' case. The Santa Clara County Superior Court, without relying *per se*

on *Williams*, has merely proceeded on the unproven assertion of the County defendants and San Andreas Regional Center (SARC) that a conflict of interest exists, defeating Elsie Golin's attempts on March 30, 2007 to restore her twice-appointed and twice vacated appointment as GAL for Nancy . The court below conceded that the defendants' request for judicial notice of remote past proceedings could not be properly taken for the truth of the matter in current proceedings *Lee v. City of Los Angeles,* 250 F.3d 668, 688-691 (9th Cir., 2001). A family friend was also disqualified after new and unfounded allegations by the County and SARC, exposing their pretext of a conflict of interest and showing that the defendants' intolerance of any Gal who was friendly to the Golins, or more correctly unfriendly to the defendants, was likely to prevail.

The Superior Court below, Hon. Eugene Hyman presiding, in an unsubstantiated ruling favoring these influential local public officials, on May 30, 2007, held that Elsie Golin had an "unwaivable conflict of interest" with her daughter Nancy, as o did the Golin's volunteer friend John Lehman - who is not a party to the case. The court issued an Order drafted in advance by the County (*infra*, a-2) that did not purport to explain by what standard a conflict was found to exist, and cited no authorities in support. The County and state opposed the appointment of *any* GAL for Nancy. Yet, in their demurrers seeking dismissal on every count they cited as a defense, "Nancy Golin is a person for whom a conservator has been appointed and the parents do not have standing to sue on her behalf." By the court's denying Nancy a GAL, the County and SARC intend that Nancy be deprived of any standing to sue and on that basis have urged the court to sustain their demurrers against Nancy's causes of action without leave to amend.

In that ruling, the court below sided with the argument of the County defendants[2] that Nancy's parents had no standing to sue on her behalf, and that it was not known if Nancy herself wanted to pursue those claims, and a neutral third party should be brought in by the defense to determine if those claims had merit.

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[2] The Santa Clara County Defendants (or "County") include: Deputy District Attorneys Randy Hey and Jacqui Duong, Adult Protective Services' chief Jamie Buckmaster, Public Defenders Malorie Street and Mary Greenwood, County Board of Supervisors,

In effect, outsourcing the entire judicial process including all its due process safeguards including trial by jury and effective representation, by relegating the adversarial litigation to an administrative procedure controlled by the County defendants through appointment of a single "uninterested" party with an amorphous "best interests" standard.

County attorney Fligor urged the court to appoint an independent neutral third party to:

> "...research and independently investigate whether or not it is in Nancy's best interests to bring this lawsuit. The parents do not have that standing, and so they cannot unilaterally decide if we are going to bring these claims on behalf of Nancy without the standing..." (RTP[3] p 5 lines 26 through p 6, lines 1-4)

and stated that it was the County's expectation to have DDS[4] dismissed by demurrer without leave to amend [on grounds that, due to the County's objections, Nancy still did not have a GAL], so that DDS *as a former defendant* could appoint a plaintiff-unfriendly GAL that the County would not object to who would evaluate her claims (and likely dismiss them) (RTP p 9, lines 2-9). Fligor argued "there is nothing in the record to show that [Nancy] is interested in bringing these claims" (RTP p12, lines 10-11). Nancy has ASD.

Without notice, the court below announced the appointment of an unknown private fiduciary Claudia Johnson, chosen apparently by the court itself as the "neutral, uninterested third–party" that was supposed to be more effective than mother Elsie Golin. The court failed to notify Ms. Johnson to appear, and after the aborted June 5, 2007 demurrer hearings, Ms. Johnson through her attorney applied to the court to have her appointment vacated on grounds that she had never been asked to serve and lacked the time and resources to serve such a complex case *pro bono* (*infra*, a-6).

At the next hearing, Judge Hyman announced his intention to appoint attorney Alan Fleishman, a *potential defendant or material witness* with long history of service as counsel for defendant SARC, who volunteered to serve *pro bono*. Mr. Fleishman *was*

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[3] RTP=Reporter's Transcripts of Proceedings, May 30, 2007, probate court.

[4] DDS=California Department of Developmental Services, formerly headed by Director Clifford B. Allenby and now Therese Delgadillo.

named four times in the Golins' complaint (VAC[5] ¶¶63, 81) based on his previous record as the lawyer who spearheaded SARC's and APS's attack on the family in 2001-2002. While Mr. Fleishman withdrew after Jeff Golin strenuously objected, citing Mr. Fleishman's record, this attempted intrusion raised the stakes considerably for the Golins, by showing that the court below, left to its own devices, was capable of ignoring inherent conflicts of interest while imposing alleged conflicts of interest upon the Golin's.

Jeff Golin challenged Judge Hyman for cause the next day, but Judge Hyman refused to recuse himself.

The attempted appointment of Mr. Fleishman confirmed the Golin's worst fears of unfair trial in Santa Clara County, originally expressed in the Sacramento proceeding and within the underlying writ of mandate that opposed on fair trial grounds the County's demand for a change of venue from Sacramento to Santa Clara County (Cal. Code Civ. Proc. §396(c)).

In agreeing with County's May 30, 2007 oral argument requesting appointment of a "neutral, disinterested third-party," the court below in part directly contravened an old and firmly established holding of this Court regarding appointment of "next friends," (guardians ad litem for the plaintiffs), in *Whitmore v. Arkansas,* 495 U.S. 149, 163-4 (1990), which defined a three-pronged test: (1)"*adequate explanation as to why [she] cannot appear on her own behalf*") (*Id.* at 163), (2) "*truly dedicated to the best interests of the person on whose behalf he seeks to litigate*" (*Id.* at 163). (3) some "*significant relationship with the real party in interest*"(*Id.* at 164).

Whitmore significantly narrowed the rule at common law that any person could serve as the next friend. "This *prochein ami* may be any person who will undertake the infant's cause." 1 Blackstone 464. "Any person may act as the next friend provided he has no interest in the suit adverse to that of the infant." 2 Chitty's Archbold's Practice, 1133. "These limitations on the "next friend" doctrine are driven by the recognition that "[i]t was not intended that the writ of habeas corpus should be availed of, as matter of course, by intruders or uninvited meddlers, styling themselves next friends." *United States ex rel. Bryant v. Houston,*

[5] VAC=Verified Amended Complaint

273 F. 915, 916 (CA2 1921), quoting *Whitmore* at 149). This exactly fits the situation here.

Clearly a "neutral, uninterested third party" is the furthest thing possible from being "truly devoted," or having "some significant relationship." An uninterested next friend (or GAL) is just the opposite of what this Court intended when it established the rule. (*Rosenberg v. United States,* 346 U.S. 273, 291-292, 73 S.Ct. 1152, 1161-1162, 97 L.Ed. 1607 (1953) (Jackson, J., concurring with five other Justices) (discountenancing practice of granting "next friend" standing to one who was a stranger to the detained persons and their case and whose intervention was unauthorized by the prisoners' counsel). This is especially true when eminently qualified relatives or parents with committed relationships are available and ready to act.

In response to County's present arguments adopted by the court below, in the preceding federal suit, *Golin v. Allenby*, 135 Fed.Appx. 978 (2005), the Circuit Court of Appeals declined to reach the parents' invoked GAL qualifications under the *Whitmore* test[6], affirming only they were unrepresented non-attorney parent petitioners[7], which they have now cured by retention of counsel. The only two holdings that court reached were: "(1) parents did not have standing to challenge state proceeding, and (2) parents were not eligible for appointment as child's guardians ad litem."

"Parents were not eligible for appointment as their child's guardians ad litem, where neither parent was attorney. *Golin v. Allenby*, 135 Fed.Appx. 978 (2005)," citing 118 A.L.R. 401, "Necessity for and degree of relationship to infant as affecting representation as next friend or guardian ad litem," by H.D.W. distilling the outcome of the Golins' Ninth Circuit appeal merely as a non-attorney parent situation.

In *Jarvis v. Crozier* (1899, C. C.) 98 F. 753, the court quoted with approval the following statement from 1 Daniel, Ch. Pr. 69:

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[6] *Golin v. Allenby*, Ninth Circuit Appellants' Opening Brief, available at 2004 WL 3155788 (9th Cir.), at 1.

[7] *Golin v. Allenby*, 135 Fed.Appx. 978, 979 (9th Cir.(Cal.)),... "The Golins contend in the alternative that the district court abused its discretion when it did not appoint them as Nancy Golin's guardians ad litem. This contention fails because neither Jeffrey nor Elsie Golin is an attorney and non-attorneys are barred from bringing suit on behalf of others.

"When an infant claims a right or suffers an injury on account of which it is necessary to resort to a court of chancery to protect his rights, his nearest relation not concerned in point of interest in the matter in question is supposed to be the person who will take him under his protection and institute a suit to assert his rights, or defend an action against him; and it is for this reason that a person who institutes a suit on behalf of an infant is termed 'his next friend.'"

However, it seems that the court did not intend to rely upon this statement as exclusive, inasmuch as it expressed the opinion that a next friend, in order to conduct litigation, should be either a party "duly authorized" by order of the court, an executor or other personal representative having control of the infants' estate, or "next of kin, and so nearly related to [the infants] that the court would recognize the right to act for them." The proceeding was one for the partition of lands, and the court made an order "directing that [another] guardian ad litem be appointed for the infant defendants, to protect their interests." (*See also* e.g., *Bank of United States v. Ritchie* (1834) 8 Pet. (U.S.) 128, 8 L. ed. 890 (strongly supporting the general practice of appointing the nearest relative, where otherwise qualified), *Bernard v. Merrill* (1898) 91 Me. 358, 40 A. 136, *Bonner v. Ogilvie* (1900) 24 Tex. Civ. App. 237, 58 S.W. 1027.)

This case and *Williams* are distinguishable on account of the exclusive nature of the claims by Nancy Golin and her parents, and the fact that the claims raise no issues of monetary conflicts of interest in a settlement as in Jarvis because there is no money damages or estate claim in this case (*Williams* at 20). The success or failure of the parents claims do not rest upon the success or failure of the child's concerns. Furthermore, there is no other available "next of kin, and so nearly related" and the parents remain undivided.

The core theory which we advance here is that a defendant's allegations of a conflict of interest in opposition to a plaintiffs' *ex parte* GAL appointment may not be raised as a defense at the pleading stage, because to do so undermines the firmly rooted principle that there is no record before the court other than the complaint before the adjudicative phase, and factual defenses have no bearing whatever in testing the sufficiency of the complaint (*Lee v. City of Los Angeles,* 250 F.3d 668, 688-691 (9th Cir., 2001). When the legal sufficiency of a complaint's allegations is

tested by a motion under Rule 12(b)(6), "[r]eview is limited to the complaint." *Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir.1993).

An allegation of a conflict of interest raised by a defendant at the pleading stage falls squarely into a factual defense, and to circumvent this rule is to entirely circumvent due process, leading precisely to the absurd results we are watching unfold here that contravene every other established rule. Unless there is a conflict of interest disclosed in the complaint (*Chrissy F. v. Mississippi Dept. of Public Welfare,* 883 F.2d 25 (5th Cir.1989)), or the attorney representing the plaintiffs finds upon his investigation that there is a conflict between the parties he represents, which he is bound by ethical duty to investigate, defendants allegations of a GAL conflict of interest requires reaching the factual merits and is premature, and *ex parte* appointment is appropriate until adjudication.

The only remaining question raised by County, that the parents lack any right to sue on Nancy's behalf as an incompetent, conserved adult, may now be clearly approached by statutory interpretation as a new decision of this Court.

On May 21, 2007, the same day that this petition for certiorari was filed. this Court released its decision in *Winkelman v. Parma City*, 126 S.Ct. 2057 (May 15, 2007) which held that parents in IDEA cases before federal courts had independent enforceable rights to pursue their children's claims in federal courts, as "parties aggrieved." The Court declined to reach the question of unrepresented non-attorney parent petitioners, holding only that IDEA statutes gave parents their own rights to pursue their own claims on behalf of their minor autistic child that did not rest on the child's own standing.

In *Winkelman* the Court now appears to have left the door open to settling similar standing issues in favor of parents or other interested parties on behalf of incapacitated children and adults in ADA case. By viewing the entire statutory scheme as a whole, ADA provides independent enforceable rights for parents to sue as "parties aggrieved."

Authority for this argument can first be found by analysis of ADA's interlocking statutory provisions Enforcement provisions of Title II of the Americans with Disabilities Act (ADA) codified under 42 U.S.C. § 12133 (*infra*, a-9), which provides that the enforcement powers will be coextensive with the powers enforce-

able under Section 520 of the Rehabilitation Act, 29 U.S.C. §794a of the Labor Code (*infra*, a-9), which in turn statutorily defines those powers as coextensive with the enforcement powers of the 1964 Civil Rights Act, 42 U.S.C. §2000d et seq., including 42 U.S.C §2000e(5) (*infra*, a-10) governing discrimination by race in employment. Those acts expressly extend independent enforceable powers to "persons aggrieved," as was true in the IDEA statutes cited in *Winkelman*.

As Mr. Justice Kennedy stated for the Court in *Winkelman*, (*at* 1999), "Petitioners' primary theory is that the Act makes parents real parties in interest to IDEA actions, not " mer[e] guardians of their children's rights." He continued,

> "Petitioners cannot cite a specific provision in IDEA mandating in direct and explicit terms that parents have the status of real parties in interest. They instead base their argument on a comprehensive reading of IDEA. Taken as a whole, they contend, the Act leads to the necessary conclusion that parents have independent, enforceable rights"

Following the Court's guidance, we advocate a similar theory not under IDEA, but under the American with Disabilities Act (ADA), claimed in the action below (VAC ¶¶275-282)[8].

That parents or concerned relatives of handicapped or developmentally disabled children, may be regarded as "persons aggrieved" giving them standing and enforceable, independent substantive and procedural rights of their own on behalf of their children *that may well extend into adulthood*, if necessary, may be approached in the same fashion as this Court did in Winkelman and by examination of the construction of the entire statutory scheme as a whole. Certainly, we do not find language in the ADA that refers only to minor children rather than adults. It would make no sense, given the express findings of Congress in enacting ADA, to arbitrarily limit its "parties aggrieved" standing to parents of minor children rather than parents of non-minors who were continually without capacity since birth till

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[8] supported by allegations of "actual constitutional violations" in additional Claims under the 1st (VAC ¶¶213-220), 4th (VAC ¶¶206-212), 5th (VAC ¶¶221-226), 6th (VAC ¶¶295-311), 8th (VAC ¶¶254-266), and other claims citing Section 1983, and Section 1985 under the different causes.

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post minority

In fact, Congress has clearly expressed its policy findings in favor of supporting families, in several supporting schemes, including the Developmental Disabilities Assistance and Bill of Rights," 42 U.S.C. § 15091(a) (*infra*, a-10), in which Congress clearly invoked its findings and intention governing its policy towards families of developmentally disabled persons. This includes the goals "(A) to support the family," (B) to enable families of children with disabilities to nurture and enjoy their children at home;(C) to enable families of children with disabilities to make informed choices and decisions regarding the nature of supports, resources, services, and other assistance made available to such families; and (D) to support family caregivers of adults with disabilities. "prevent involuntary out-of-the-home placement of such children and maintain family unity," and 42 U.S.C. §15091(a)(A)(6) states, "It is the policy of the United States that all programs, projects, and activities funded under this subchapter shall be **family-centered and family-directed**, and shall be provided in a manner consistent with the goal of providing families of children with disabilities with the support the families need to raise their children at home."

Under that act. 42 U.S.C.§15092 "Definitions and special rule" (*infra*, a-11) states in relevant part....

"(3) Family support for families of children with disabilities

"The term "family support for families of children with disabilities" means supports, resources, services, and other assistance provided to families of children with disabilities pursuant to State policy that are designed to--...

"(C) prevent involuntary out-of-the-home placement of such children and maintain family unity; and

"(D) reunite families with children with disabilities who have been placed out of the home, whenever possible."

CONCLUSION

For the reasons cited herein, the petition for certiorari should be granted.

Respectfully submitted, this 7th Day of July, 2007.

Gerard W. Wallace, Esq.
Attorney for plaintiffs

~~a.~~ APPENDIX A

TABLE OF EXHIBITS

SUPPLEMENTAL OPINIONS OR ORDERS BELOW

page	
a-2	May 30, 2007. Order accepting in part and denying in part plaintiffs' application for appointment of Guardian Ad Litem, rejecting Elsie Y. Golin or John R. Lehman's application, "permanently" claiming an "unwaivable conflict of interest" without discussion, and *sua sponte* appointing unknown "uninterested, neutral third party" fiduciary Claudia Johnson as GAL for Nancy. Order was already prepared by county and was not served on plaintiffs. Santa Clara County Superior Court – Civil Div., Case No. 1-07-CV-082823 Golin v. Allenby, Hon. Eugene Hyman, pres.
a-4	June 4, 2007. Order denying plaintiffs' motion for stay pending proceedings in this Court, Santa Clara County Superior Court – Civil Div., Case No. 1-07-CV-082823, Golin v. Allenby, Hon. Kevin P. Murphy, pres.
a-6	June 8, 2007. Ex Parte Application and Order Vacating the May 30, 2007 Appointment of Claudia P. Johnson as Guardian Ad Litem for Nancy K. Golin, *nunc pro tunc*, and Requesting a Waiver of Court Fees, Santa Clara County Superior Court – Civil Div., Case No. 1-07-CV-082823 (Granted). Hon. Eugene Hyman, presiding.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SANTA CLARA CIVIL DIVISION UNLIMITED JURISDICTION

JEFFREY R. **GOLIN,** ELSIE Y. GOLIN, NANCY K. GOLIN, *Plaintiffs* v. CLIFFORD B. **ALLENBY,** *et al* *Defendants*	**No.: 1-07-CV-082823** ~~**(Proposed)**~~ **ORDER AFTER HEARING EX PARTE MOTION FOR STAY** Judge: Kevin Murphy Department: 22 Date:: June 4, 2007 Time: 8:30 a.m.

The Motion of Plaintiffs JEFFREY R. GOLIN, ELSIE Y. GOLIN AND NANCY K. GOLIN to stay the current proceedings pending review on an interlocutory question by the US Supreme Court on certiorari and other reasons came up for hearing before the Honorable Kevin Murphy, in Department 22 at 9:00 a.m.

The court having considered the papers filed by the parties and the arguments of counsel, this plaintiffs' application for temporary stay is ~~**(GRANTED)**~~, **DENIED**, (circle one), pending: 1) the Supreme Court's review on *certiorari* in Case No. 06-1524, 2) the GAL's preparation for briefing and hearing, 3) the motion to reconsider selection of GAL.

IT IS SO ORDERED.

DATED: JUNE 4, 2007

Kevin J. Murphy
Honorable Kevin Murphy
Santa Clara County Superior Court Judge

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA CLARA

JEFFREY R. GOLIN, ELSIE Y. GOLIN, NANCY K. GOLIN Plaintiffs, vs. CLIFFORD B. ALLENBY, et al Defendants	No. 1-07-CV-082823 *EX PARTE* APPLICATION FOR ORDER VACATING THE MAY 30, 2007 APPOINTMENT OF CLAUDIA P. JOHNSON FOR NANCY K. GOLIN, *NUNC PRO TUNC* AND REQUESTING A WAIVER OF FILING FEES

Petitioner CLAUDIA P. JOHNSON, alleges:

1. Petitioner is a private professional conservator duly registered with the County of Santa Clara and the State of California.
2. Petitioner is informed and believes and thereon alleges that NANCY K. GOLIN, a plaintiff in this action, is an incapacitated within the meaning of Probate Code Section 1003(a)(2) and as such is unable to act as a party to litigation; and that appointment of a guardian ad item for NANCY K. GOLIN is warranted pursuant to that Section
3. On May 30, 2007, at 10:00 a.m., a motion was made by Plaintiff ELSIE Y. GOLIN requesting appointment of a guardian ad item for Plaintiff NANCY K. GOLIN. That petition was opposed by Defendant SAN ANDREAS REGIONAL CENTER, INC., represented by Eric A. Gale, Esq., Bradley, Curley Asiano, Barrabee & Crawford. Plaintiff ESIE GOLAN was represented by Lara Shapiro, Esq. Plaintiff JEFFRY GOLIN also appeared, In Propria Personam. After consideration of the papers on file and oral arguments, the Court made an or-

der granting in part and denying in part the motion. A copy of that order is attached hereto as Exhibit A, and incorporated herein by this reference

4. Page 2, line 10 of the order includes hand-written language as follows": "The court appoints Claudia P. Johnson as guardian for Nancy K. Golin'
5. The time required to fulfill the responsibilities of guardian ad litem in this action would seriously compromise Petitioner's ability to the fiduciary work she has already committed to perform in other difficult and challenging conservatorship and probate cases pending before this court
6. Petitioner is informed and believes that there are no funds from which she might be freed. Petitioner is not able to commit to participate in a case of this magnitude on a pro bono basis.
7. Further, since Petitioner is not an attorney, she would require the assistance of counsel to perform the duties of guardian ad litem. Petitioner does not have sufficient personal funds to pay for legal representation, nor does she have access to legal services on a *pro bono* basis.
8. Petitioner was unaware that she was being considered by the Court to serve s guardian ad litem, and had **no notice of the motion**[1]. Had she known, Petitioner could have advised the Court of the obstacles described above, and that she was not able to accept the position. Petitioner respectfully requests that the Court set aside her appointment, *nunc pro tunc*.

WHEREFORE, Petitioner requests that the Court vacate that portion of the order filed May 30, 2007 *nunc pro tunc* appointing Claudia P. Johnson *guardian ad item*, and waive any filing fees and ex parte hearing fees which Petitioner might otherwise be required to pay from her personal funds to request this relief from the Court (first appearance of a party and ex parte hearing fees.)

Dated: June 11, 2007

Respectfully submitted,
Margaret Laughlin Martin, Esq.
Appearing as Special Counsel for
Claudia P. Johnson

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[1] emphasis in original

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA CLARA

JEFFREY R. GOLIN, ELSIE Y. GOLIN, NANCY K. GOLIN Plaintiffs, vs. CLIFFORD B. ALLENBY, et al Defendants	No. 1-07-CV-082823 *EX PARTE* APPLICATION FOR ORDER VACATING THE MAY 30, 2007 APPOINTMENT OF CLAUDIA P. JOHNSON FOR NANCY K. GOLIN, *NUNC PRO TUNC* AND REQUESTING A WAIVER OF FILING FEES

Good cause appearing,
IT IS HEREBY ORDERED;

1. The appointment of Claudia P. Johnson guardian ad litem for Plaintiff NANCY K. GOLIN contained in the order filed May 30, 2007 is vacated *nunc pro tunc*.
2. The first appearance filing fee and the ex parte hearing fee for Claudia P. Johnson are waived.

Dated: JUNE 11, 2007 EUGENE M. HYMAN
JUDGE OF THE SUPERIOR COURT

APPENDIX B

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(Title II of the Americans with Disabilities Act (Prohibition of Discrimination against the Handicapped)):

42 U.S.C. §12132. : "Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12133: "The remedies, procedures, and rights set forth in section 794a of Title 29 (Labor Code) shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title."

29 U.S.C. §794a. Remedies and attorney fees:

(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5(f) through (k)), shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 [42 U.S.C.§ 2000d et seq.] shall be available to any **person aggrieved** by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title (emph added).

42 U.S.C 2000d *et seq* (2000e-5) (Prohibition against exclusion from participation in, denial of benefits of, and discrimination under Federally assisted programs on ground of race, color, or national origin). "

"No person in the United States shall, on the ground of race,

color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

This enforcement provision is coextensive with the enforcement provisions of the 1964 Civil Rights act, prohibiting racial discrimination in employment:

"(b) Charges by **persons aggrieved** or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause."

"Developmental Disabilities Assistance and Bill of Rights," 42 U.S.C. § 15091(a) (Subchapter II Family Support, Findings, purposes, and policy),:

(a) Findings:

"Congress makes the following findings:

"(1) It is in the best interest of our Nation to preserve, strengthen, and maintain the family.

"**(2)** Families of children with disabilities provide support, care, and training to their children that can save States millions of dollars. Without the efforts of family caregivers, many persons with disabilities would receive care through State-supported out-of-home placements.

"**(3)** Most families of children with disabilities, especially families in unserved and underserved populations, do not have access to family-centered and family-directed services to support such families in their efforts to care for such children at home.

"**(4)** Medical advances and improved health care have increased the life span of many people with disabilities, and the combination of the longer life spans and the aging of family caregivers places a continually increasing demand on the finite service delivery systems of the States.

"**(5)** In 1996, 49 States provided family support initiatives in response to the needs of families of children with disabilities. Such initiatives included the provision of cash subsidies, respite care, and other forms of support. There is a need in each State,

however, to strengthen, expand, and coordinate the activities of a system of family support services for families of children with disabilities that is easily accessible, avoids duplication, uses resources efficiently, and prevents gaps in services to families in all areas of the State.

"(6) The goals of the Nation properly include the goal of providing to families of children with disabilities the family support services necessary--

(A) to support the family;

(B) to enable families of children with disabilities to nurture and enjoy their children at home;

(C) to enable families of children with disabilities to make informed choices and decisions regarding the nature of supports, resources, services, and other assistance made available to such families; and

(D) to support family caregivers of adults with disabilities.

(b) Purposes

"The purposes of this subchapter are--

"(1) to promote and strengthen the implementation of comprehensive State systems of family support services, for families with children with disabilities, that are family-centered and family-directed, and that provide families with the greatest possible decision-making authority and control regarding the nature and use of services and support;

"(2) to promote leadership by families in planning, policy development, implementation, and evaluation of family support services for families of children with disabilities;

"(3) to promote and develop interagency coordination and collaboration between agencies responsible for providing the services; and

"(4) to increase the availability of, funding for, access to, and provision of family support services for families of children with disabilities.

"(c) Policy

"It is the policy of the United States that all programs, projects, and activities funded under this subchapter shall be family-centered and family-directed, and shall be provided in a manner consistent with the goal of providing families of children with disabilities with the support the families need to raise their children at home."

42 U.S.C.§ 15092 "Definitions and special rule" (in relevant

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part):...

"(3) Family support for families of children with disabilities

"The term "family support for families of children with disabilities" means supports, resources, services, and other assistance provided to families of children with disabilities pursuant to State policy that are designed to--

"(A) support families in the efforts of such families to raise their children with disabilities in the home;

"(B) strengthen the role of the family as primary caregiver for such children;

"(C) prevent involuntary out-of-the-home placement of such children and maintain family unity; and

"(D) reunite families with children with disabilities who have been placed out of the home, whenever possible."